Dear Mr Hoedeman,

Subject: Your application for access to documents – GESTDEM 2020/5436 and GESTDEM 2021/0559

We refer to

- your e-mail dated 15 September 2020 in which you made a request for access to documents, registered on the same date under the reference number GESTDEM 2020/5436.
- our email of 2 October 2020 extending the time limit to respond to your request GESTDEM 2020/5436, according to Article 7(3) of Regulation (EC) No 1049/2001.
- your e-mail dated 01 February 2021 in which you made a follow-up request for access to documents, registered on the same date under the reference number GESTDEM 2021/0559.
- our email of 22 February 2021 extending the time limit to respond to your request GESTDEM 2021/0559, according to Article 7(3) of Regulation (EC) No 1049/2001.
- our letter of 15 March 2021 in which we provided you the list of the identified documents falling within the scope of your requests GESTDEM 2020/5436 and

1 According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during to the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.
1. **Scope of your requests**

In your request, you ask, on the basis of Regulation (EC) No 1049/2001, access to:

**GESTDEM 2020/5436**

- all reports (and other notes) from meetings of the Vaccines Procurement Steering Committee and the Joint Negotiation Team (JNT) with representatives of pharmaceutical companies about Advance Purchase Agreements (APAs) and the purchase of potential vaccines against COVID-19.

- all correspondence (including emails and their attachments) between the Vaccines Procurement Steering Committee and the Joint Negotiation Team (JNT) and representatives of pharmaceutical companies (including Sanofi-GSK, Johnson & Johnson, CureVac, AstraZeneca, Moderna and others) about Advance Purchase Agreements (APAs) and the purchase of potential vaccines against COVID-19.

- a list of all the above-mentioned documents (including dates, names of participants/senders/recipient and their affiliation, subject of meeting/correspondence).

To your request you add the following:

There is a clear public interest in disclosure of these documents. The transparency rules as set out in the Lisbon Treaty oblige the EU institutions to work as openly and as closely as possible to citizens. There is clearly a lot at stake for EU citizens in the vaccine deal negotiations. Citizens have the right to know about these negotiations that are happening on their behalf, involving billions of euros of public money to be spent for the development of vaccines.

Secrecy around the negotiations about the vaccines, moreover, may undermine public confidence in the EU and its handling of the pandemic, but also in the vaccines themselves (with negative consequences for public health beyond the current pandemic).

Blanket confidentiality cannot be the rule for the negotiations about the Covid19 vaccine contracts. Price and other sorts of confidentiality covering commercial aspects of these contracts cannot preclude transparency, for instance around negotiations about liability and other provisions with clear implications for patient safety and the protection of public health.

The currently negotiated contracts for potential covid19 vaccines differ from usual medicines procurement deals. Considerable amounts of public money and public guarantees are invested into the R&D and manufacturing process through the signature of advance purchase agreements between the European Commission and individual pharma companies. APAs essentially constitute insurance policies paid for by taxpayers’ money which amongst other guarantee losses sustained by pharma developers. Governments commit in advance to shouldering the cost of certain liabilities sustained by pharma companies throughout the R&D process; by doing so they de-risk it and become co-developers. This makes the need for transparency and public accountability around the negotiations even stronger.

Please note that there is also a clear public interest in the release of the names of the

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members of the Joint Negotiation Team (JNT). The public has the right to know who is negotiating on the EU’s behalf. Knowing the names of the negotiators is a pre-condition for assessing potential conflicts of interest.

GESTDEM 2021/0559

- all reports (and other notes) from meetings of representatives of the European Commission, members of the Vaccines Procurement Steering Committee and members of the Joint Negotiation Team (JNT) with representatives of pharmaceutical companies (AstraZeneca and others) about Advance Purchase Agreements (APAs) and the purchase of vaccines against COVID-19.

- all correspondence (including emails and their attachments) between representatives of the European Commission, members of the Vaccines Procurement Steering Committee and members of the Joint Negotiation Team (JNT) and representatives of pharmaceutical companies (AstraZeneca and others) about Advance Purchase Agreements (APAs) and the purchase of vaccines against COVID-19.

- a list of all the above-mentioned documents (including dates, names of participants/senders/ recipients and their affiliation, subject of meeting/correspondence).

To your request you add the following:

There is a clear public interest in disclosure of these documents. The Lisbon Treaty obliges the EU institutions to work as openly and as closely as possible to citizens. There is clearly a lot at stake for EU citizens in the vaccine deal negotiations. Citizens have the right to know about these negotiations that are happening on their behalf, involving billions of euros of public money to be spent for the development of vaccines.

Please note that there is also a clear public interest in the release of the names of the members of the Joint Negotiation Team (JNT). The public has the right to know who was negotiating on the EU’s behalf. Knowing the names of the negotiators is a pre-condition for assessing potential conflicts of interest.

This request covers the period September 2020 until today (including meeting notes and correspondence from January 2021). It is a follow-up request to our previous request with reference number GESTDEM 2020/5436 (registered on 15/09/2020), currently the subject of an inquiry by the European Ombudsman.

2. The COVID-19 pandemic

Aware of the considerable delay in handling your request, we would like to offer you our apologies.

The sensitivity of the documents you are seeking access to required (and still requires) a thorough assessment, as their disclosure could potentially weaken the Commission position in ongoing negotiations, nullifying the beneficial effects of fair competition.

In spite of the above and in the interest of providing as much transparency as we can within the constraints set by the ongoing challenges, we are doing our utmost to provide you with the documents listed in the table sent to you with our letter of 15 March 2021 and re-attached for your convenience.

As your applications relate to a significant number of documents, for some of which the assessment is still ongoing, we propose to handle your requests in batches.
Please find attached to this reply the first batch of documents.

With this reply the Commission is providing partial access to some of the agendas of the Steering board meetings (including their emails and some attachments) and communications, in particular emails, exchanged between the Commission and Members of the JNT and BioNTech SE. The Commission has not yet concluded its assessment on whether access can be provided to other annexes of the above correspondence.

For these documents and for the remaining documents listed in the table sent to you with our letter of 15 March 2021, we will provide you with the outcome of that assessment in the coming weeks.

3. Identification and assessment of the first batch of documents

The first batch of the identified 365 documents that fall within the scope of your requests is made of 80 documents (including the published contracts).

You will find attached, for your convenience, the table sent to you with our letter of 15 March 2021 (“A. List of documents”) and also a table listing the first batch of documents we are disclosing (“A.1 List of documents_first batch”).

Having examined the documents under the provisions of Regulation (EC) No 1049/2001, we have come to the conclusion, which is further explained in paragraphs 3 and 4, that:

- full access can be granted to documents No 1, 3, 5, 11, 13, 15, 25, 43, 47, 49, 49.2, 51, 51.2, 51.3, 53, 59, 63, 67, 69, 71, 75, 77, 79, 81 and 87
- partial access can be granted to documents No 1.1, 3.1, 5.1, 11.1, 13.1, 15.1, 21, 25.1, 43.1, 47.1, 49.1 51.1, 53.1, 59.1, 63.1, 67.1, 71.1, 75.1, 77.1, 79.1, 81.1, 87.1, 114, 138, 138.1, 139, 142, 144 to 157, 159, 160, 161, 162, 166, 168, 168.1, 174, 175, 212, 260, 303 and 366, as their full disclosure is prevented by one of the exceptions to the right of access laid down in Article 4 of the Regulation.

Please note that redacted versions of the contracts signed with the pharmaceutical companies (documents No 114, 174, 175, 212, 260, 303, 366) are publicly available and can be accessed from the following webpage:


Also more recent purchase agreements are published on the same webpage.

4. Reasons for partial disclosure

a. Protection of the privacy and integrity of individuals - Article 4(1)(b) of Regulation (EC) No 1049/2001

With regard to documents No 1.1, 3.1, 5.1, 11.1, 13.1, 15.1, 21, 25.1, 43.1, 47.1, 49.1 51.1, 53.1, 59.1, 63.1, 67.1, 71.1, 75.1, 77.1, 79.1, 81.1, 87.1, 114, 138, 138.1, 139, 142, 144 to 157, 159, 160, 161, 162, 166, 168, 168.1, 174, 175, 212, 260, 303 and 366, a full disclosure is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact details of natural persons;
- handwritten signatures/abbreviated signatures of natural persons;
- other information relating to an identified or identifiable natural person, such as professional background, role etc.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these
personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.


c. Protection of the decision making process - Article 4(3) first and second subparagraph of Regulation (EC) No 1049/2001

With regard to documents 114, 138, 139, 142, 144 to 162, 166, 168, 174, 175, 212, 260, 303 and 366 a full disclosure is prevented by the exceptions laid down in paragraphs (2) and (3) of Article 4 of Regulation (EC) No 1049/2001, concerning the protection of commercial interest of a legal person and the protection of the decision making process.

Documents or parts thereof containing commercially sensitive information whose full disclosure would undermine the protection of the legitimate interests of companies are covered by the exception of the protection of commercial interest (Article 4(2), first indent, of Regulation (EC) No 1049/2001). The documents which you request access contain information relating to the commercial interests of vaccines manufacturers. Their full disclosure could damage the competitive position of the companies as well as the ongoing procurement procedures for the purchase of COVID-19 vaccines.

They contain references to sensitive business information of the companies, their subcontractors and affiliated companies, such as scientific information on the vaccines, their price, the schedule to deploy the vaccines, their production capacity, their know-how, the involvement of experts or partners, business strategies, and other information carrying a commercial value.

The (advance) purchase agreement have been negotiated in the framework of a procurement procedure without publication of a contract notice on the basis of Article 164(1)(d) of the Financial Regulation and are the outcome of those specific negotiated procedures.

All correspondence with vaccines manufacturers interested in participating in the procurement process or participating in the procurement process, are to be considered as an integral part of 1) the market assessment conducted before launching the individual negotiated procurement procedures 2) the offer of the tenderers and 3) evaluation activities lato sensu of the tenders received including the terms and conditions of draft APAs.

Giving access to the requested information could distort competition in current and future procedures, because of its commercial value or because its disclosure can prejudice the legitimate interests of economic operators who participate in the relevant procedures.

As such, they must be protected in the same way as the evaluation report and the offer submitted by tenderers, in order to avoid economic operators with which the Commission is still negotiating to benefit from information becoming available on:

- a contract that has already been signed,
- a tender still under negotiations and
- commercial information belonging to a competitor.

Therefore, documents outlining the position of the tenderer about single elements of the agreement deserve protection inasmuch as the offer of the tenderer includes each individual clause of each contract. In a procedure as the current one, where the submission of bids by different tenderers is not synchronised, releasing to the public any information on elements of an individually negotiated contract or commercial information on a products produced and sold by a company could harm the competitive position of the tenderer or economic operators vis-à-vis other tenderers or economic operators whose contracts are not yet signed, and in other possible procurement procedures they might wish to take part in.

Furthermore, with regard to the negotiation procurement procedures, the Commission is acting as a central purchasing body in the name and on behalf of all Member States in order to ensure the advance purchase of vaccines against COVID-19, as stipulated in Article 4(5)(b) of the ESI Regulation. The Commission considers therefore all individual negotiated procurement procedures as a unique process for the advance purchase of COVID-19 vaccines from different companies, as the final objective is to build a sound and diverse portfolio of vaccine candidates at disposal of Member States.

As the case-law has confirmed, the protection of commercial interests within the meaning of Article 4(2) of Regulation 1049/2001 can be validly argued also as regards further similar advance purchase agreements in which the Commission has the same position. Full disclosure would also undermine the objective of genuine competition in the procurement procedures, currently on the point of being negotiated by the Commission, as protected by Article 170(3) last subparagraph of the Financial Regulation. In the words of the Court, “it is important that the contracting authorities do not release information relating to contract award procedures which could be used to distort competition, whether in an ongoing procurement procedure or in subsequent procedures”.

It should be concluded that the full disclosure of the above mentioned documents would undermine not only the vaccines’ manufacturers commercial interest, but also the decision-making process of the Commission, as it would reveal preliminary views and policy options, which are currently under consideration. Their disclosure would also reveal important aspects of the negotiation strategy of the Commission and options that may still be relevant for other similar negotiations, and thus weaken their possible outcome. Therefore, the exceptions laid down in Article 4(3) first and second subparagraphs of Regulation (EC) No 1049/2001 apply to the documents identified above.

5. Overriding public interests

The exceptions to the right of access provided for in Article 4(2) and Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in

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5 “Emergency support under this Regulation may be granted in any of the following forms: […] b) procurement by the Commission on behalf of Member States based on an agreement between the Commission and Member States”.


8 Case C-450/06, Varec v Commission, par. 35.
disclosing the requested documents. You refer in your letter to grounds of public interest, on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden.

We have thoroughly assessed them and their relevance against the interest of the general public in good faith negotiations, as well as in the respect by all actors of the commitments taken with the signature of the contracts, including in the good faith implementation of the same.

In these circumstances, we have to conclude that the exceptions to the right to access prevail.

6. Reuse of disclosed documents

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the Commission Decision on the reuse of Commission documents. You may reuse the documents disclosed free of charge and for non-commercial and commercial purposes, provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that some of the documents entail preliminary drafts, which do not reflect the position of the Commission and cannot be quoted as such.

Please also note that the disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Finally, please note that some of the documents were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Health and Food Safety. It solely reflects the services’ interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

7. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position, also in relation to this specific reply.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

8. Request for information of the names of the Members of the JNT

In your request you ask the Commission to release the names of the members of the Joint Negotiation Team. The Joint Negotiation Team is made of representatives of seven member

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States with production capacity, namely, in alphabetical order, France, Germany, Italy, Poland, Spain, Sweden, The Netherlands.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of the names (which are personal data) of those members, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you express only a generic reference to a purpose in the public interest to have access to these personal data and you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned, the Commission will not disclose those personal data.

Yours sincerely,

(e-signed)

Sandra GALLINA
Director General